

1
2
3
4
5
6
7
8 LEONDRE PAIGE,
9 Plaintiff,
10 v.
11 KATHLEEN ALLISON,
12 Defendant.

Case No. 20-cv-07378-RMI

ORDER TO SHOW CAUSE

Re: Dkt. No. 1

13
14 Petitioner Leondre Paige, a state prisoner, filed a petition for a writ of habeas corpus
15 pursuant to 28 U.S.C. § 2254. For the reasons stated below, the court will require Respondent to
16 show cause why the petition should not be granted and why the writ should not issue.

17 This court may entertain a petition for writ of habeas corpus on “behalf of a person in
18 custody pursuant to the judgment of a state court only on the ground that he is in custody in
19 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Bell v.*
20 *Cone*, 535 U.S. 685, 693 (2002). A district court entertaining an application for a writ of habeas
21 corpus “shall forthwith award the writ or issue an order directing the respondent to show cause
22 why the writ should not be granted, unless it appears from the application that the applicant or
23 person detained is not entitled thereto.” 28 U.S.C. § 2243.

24 Petitioner was convicted in state court of first degree murder, and his sentence was
25 enhanced by the finding that he personally used and discharged a firearm causing great bodily
26 injury. *See* Pet. (dkt. 1) at 5. By virtue of the conviction and enhancements, Petitioner was
27 sentenced to serve an imprisonment term of 50 years to life. *Id.* In the course of his direct appeal,
28 Petitioner presented claims, *inter alia*, alleging prosecutorial misconduct as well as ineffective

1 assistance of counsel. *Id.* at 6. Following his unsuccessful direct appeal, Petitioner engaged in a
2 round of state habeas corpus litigation which came to an end when an adverse ruling was entered
3 against him in the California Supreme Court on September 9, 2020. *Id.* The instant Petition
4 advances the prosecutorial misconduct and ineffective assistance of counsel claims. *Id.*
5 Specifically, Petitioner alleges: (1) that the prosecutor committed misconduct during the
6 evidentiary phase of the trial by impermissibly injecting his own personal opinions and beliefs into
7 the evidentiary presentation and by vouching for the credibility of witnesses for the prosecution
8 (*see id.* at 22-29); (2) that the prosecutor committed misconduct during his closing argument by
9 asking the jurors to consider the consequences and punishments that would result from their
10 potential verdict, by misstating the law on the standards governing implied malice in general, and
11 by misstating the standards governing voluntary manslaughter based on sudden quarrel and
12 imperfect self-defense (*see id.* at 29-33); (3) that trial counsel was ineffective for failing to object
13 at trial to any of the reported acts of misconduct attributable to the prosecutor given that there was
14 a plausible defense-of-others justification for the homicide because the victim had charged into a
15 fight between two other persons while punching and knocking out one of those persons, and given
16 his heavy intoxication during the crime, Petitioner also alleges that his counsel was ineffective for
17 failing to investigate and present the fact of his intoxication to the trial jury by, for example,
18 retaining a toxicologist (*see id.* at 33-39). Construed liberally, the Petition states cognizable claims
19 for relief.

20 Thus, good cause appearing therefor, the court hereby **ORDERS** the following:

21 1. The Clerk of the Court shall serve a copy of this Order and the Petition and all attachments
22 thereto upon Respondent and Respondent's counsel, the Attorney General of the State of
23 California. The Clerk shall also serve a copy of this Order on Petitioner and Petitioner's
24 counsel.

25 2. Respondent shall serve and file with the Court, within sixty (60) days of the issuance of
26 this Order, an Answer conforming in all respects to Rule 5 of the Rules Governing Section
27 2254 Cases, in which Respondent is directed to show cause why the Petition should not be
28 granted and why a writ of habeas corpus should not issue. Respondent shall serve and file

1 with the Answer a copy of all portions of the state record that have been transcribed
2 previously and that are relevant to a determination of the issues presented by the Petition.
3 If Petitioner wishes to respond to the Answer, he shall do so by filing a Traverse with the
4 court and serving it on Respondent within thirty (30) days of his receipt of the Answer.
5 3. Respondent may elect to serve and file a motion to dismiss on procedural grounds in lieu
6 of an Answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
7 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with
8 the court and serve on Respondent an opposition or statement of non-opposition to the
9 motion within thirty (30) days of receipt of the motion, and Respondent may file with the
10 court and serve on Petitioner a reply within fifteen (15) days of receipt of any opposition.

11 **IT IS SO ORDERED.**

12 Dated: October 26, 2020

13 
14 ROBERT M. ILLMAN
15 United States Magistrate Judge